

Syllabus

IN THE MATTER OF

WESTERN CONFECTIONERS ASSOCIATION, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4132. Complaint, June 14, 1940¹—Decision, June 22, 1942

Where a nonprofit Association, composed of manufacturers of candies and other confections in California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico, with its principal office and place of business in San Francisco; officers, directors, and trustees thereof; and various manufacturer-members who constituted a large and influential portion of the candy manufacturers in California, Washington, Utah, and Colorado, able to control or substantially influence the flow of trade in candies in their area, and prices of such products, in substantial interstate competition with others and, but for combination and conspiracy below described, with one another—

- (a) Entered into an agreement, combination or conspiracy to maintain minimum prices for their products and uniform discounts to purchasers thereof through the medium of the Association, and making use of the California Unfair Practices Act which, among other things, prohibits sale below seller's cost, as the basis of price agreements which would cover all of the sales transactions of all Association members; and in furtherance of said plan—
- (1) Undertook, through the Association, the making of certain "Cost Surveys" which involved the submission to a commercial reporting concern by members of data pertaining to items entering into the cost of manufacture for use in compiling unidentified averages; and distribution thereof by the Association to the members;
- (2) Provided in a new constitution, among other things, that no member should sell below cost—having in mind, apparently, above statute—providing, however, that a member might meet the lower prices of a competitor if not in violation "of the established cost survey"; and
- (3) Adopted said "Survey's" figures as representing the correct cost on hard mixed candy and chocolate drops, shortly after the completion of said "cost survey" on hard mixed candy, chocolate drops and pan goods (for which alone said surveys were completed), at a meeting called, at their instance apparently, by the Los Angeles city attorney, and advised Association members of such action;
- (b) Threatened with legal action manufacturers who, according to reports, were not maintaining the minimum prices thus arrived at, taking action in some cases with a view thereto, and also caused threats to be circulated generally among manufacturers that those who sold their candies at less than the cost figure adopted would be prosecuted under the said Unfair Practices Act; and
- (c) Concertedly classified purchasers as syndicates, wholesalers, jobbers, and retailers, on the basis of information supplied by manufacturers relative to their discounts; and adhered to such classification in granting discounts;

¹ Amended and supplemental.

Syllabus

34 F. T. C.

With result that minimum prices not only on hard mixed candy and chocolate drops, but on other candies as well, were increased, and with effect of substantially restraining competition in the sale of candies and other confections in commerce, and with tendency and capacity so to do, and to increase price of said products to the purchasers and ultimately to the general public:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Floyd C. Collins for the Commission.

Cressaty & Elstein, of Los Angeles, Calif., for Western Confectioners Ass'n, Inc.; and various officers, directors, trustees and members thereof, and along with—

Mr. Grant B. Cooper, of Los Angeles, Calif., for Warren Watkins;

Mr. John H. Foley, of Los Angeles, Calif., for Alfred Beaudry and Wilfred Beaudry;

Mr. Henry C. Lank, of Washington, D. C., for Leon Sweet and Sweet Candy Co.;

Croson, Johnson & Wheelon, of Seattle, Wash., for Harold Thompson and Candy House, Inc.;

Skeel, McKelvy, Henke, Evenson & Uhlmann, of Seattle, Wash., for Chester Roberts and Imperial Candy Co.;

McKee, Tasheira & Wahrhaftig, of Oakland, Calif., for George Cardinet and Cardinet Candy Co., Inc.; and

Chickering & Gregory, of San Francisco, Calif., for California Peanut Co.

Mr. Philip S. Ehrlich, of San Francisco, Calif., for Euclid Candy Co. of California, Inc.

Mr. W. Parker Jones, of Washington, D. C., and *Mr. George H. Coopers* and *Mr. Edwin Foster Blair*, of New York City, for National Biscuit Co.

Mr. N. Matzger, of San Francisco, Calif., for Matzger Chocolate Co.

Elliot & Calden, of San Francisco, Calif., for Golden Nugget Sweets, Ltd.

Piccirillo & Wolf, of San Francisco, Calif., for Coxon Co.

Orrick, Dahlquist, Neff & Herrington, of San Francisco, Calif., for General Food Products Co.

Orloff & Katz, of Los Angeles, Calif., for Los Angeles Nut House.

Mr. Vernon P. Spencer, of Inglewood, Calif., for Johanna A. Gilker.

Mr. William A. Wittman, of South Gate, Calif., for Triangle Candy Co. and Walter A. Hewitt.

1431

Complaint

Mr. H. E. Gleason, of Los Angeles, Calif., for Charles E. Hassey.
Mr. Harley W. Gustin, of Salt Lake City, Utah, for Ostler Candy Co.

Ogden & Ogden, of Seattle, Wash., for Queen Anne Candy Co.

Monheimer & Griffin, of Seattle, Wash., for Joseph Vinikow.

Chickering & Gregory, of San Francisco, Calif., for Margaret Burnham's, Inc.

Mr. Wilbur F. Denious, of Denver, Colo., for Brecht Candy Co.

Rothgerber & Appel, of Denver, Colo., for Cosner Candy Co.

Hamblen, Gilbert & Brooke, of Spokane, Wash., for Riley Candy Co..

Mr. Derrah B. Van Dyke, of Ogden, Utah, for Shupe-Williams Candy Co.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the corporations, firms, partnerships, and individuals named in the caption hereof and hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. Western Confectioners Association, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 74 New Montgomery Street, San Francisco, Calif. Said respondent is an incorporated nonprofit association and its members are composed of manufacturers of candies and other confections located in the States of California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico. Said respondent will be hereinafter referred to as respondent Association.

Respondent Association, is now and has been for several years last past, engaged in collecting and disseminating among its members, and the trade in general, information relating to the candy and confection industry, formulating and enforcing rules with reference to labor, wages, costs, and uniform sales prices and discounts and classification of purchasers in the manufacture, sale, and distribution of candies and other confections.

Complaint

34 F. T. C.

Respondent, Warren Watkins, of 768 Merchant Street, Los Angeles, Calif., is an individual, and is president, of respondent Association.

T. A. White, of 2700 Eighteenth Street, San Francisco, Calif., is an individual, and is vice president, of the respondent Association.

Clarence M. Kretchmer, of 55 Federal Street, San Francisco, Calif., is an individual, and is secretary-treasurer, of respondent Association.

LeRoy M. Gimbal, of 501 Folsom Street, San Francisco, Calif., is an individual, and is a director, of respondent Association.

Alfred Beaudry, of 3762 South Normandie, Los Angeles, Calif., is an individual, and is a director, of the respondent Association.

Leon Sweet, of 218 South First Street West, Salt Lake City, Utah, is an individual, and is a director, of respondent Association.

Harold Thompson, of 1600 Dexter Avenue, Seattle, Wash., is an individual, and is a director, of respondent Association.

E. H. Jenanyan, of 530 Davis Street, San Francisco, Calif., is an individual, and is a director, of the respondent Association.

A. C. Carrington, of 2420 Encinal Avenue, Alameda, Calif., is an individual, and is a trustee, of the respondent Association.

Chester Roberts, of 800 Western Avenue, Seattle, Wash., is an individual, and is a trustee, of the respondent Association.

George Cardinet, of 2172 Market Street, Oakland, Calif., is an individual, and is a trustee, of the respondent Association.

H. L. Brown, of 110 East Twenty-sixth Street, Tacoma, Wash., is an individual, and is a trustee, of the respondent Association.

Robert W. Kaneen, of 4020 Avalon Boulevard, Los Angeles, Calif., is an individual, and is a trustee, of respondent Association.

E. A. Hoffman, of 6600 Avalon Boulevard, Los Angeles, Calif., is an individual, and is a trustee of respondent Association.

PAR. 2. Respondent, Brown & Haley, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 110 East Twenty-sixth Street, Tacoma, Wash.

L. M. Gimbal and R. E. Gimbal, is a partnership, trading and doing business as Gimbal Brothers, and the address and principal place of business of respondents is 501 Folsom Street, San Francisco, Calif.

Euclid Candy Co. of California, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, and has its home office and principal place of business located at 715 Battery Street, San Francisco, Calif.

Hromada Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Cali-

1431

Complaint

fornia, with its home office and principal place of business located at 1206 Sansome Street, San Francisco, Calif.

Sierra Candy Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 2700 Eighteenth Street, San Francisco, Calif.

Hoefer's Centennial Chocolates, Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 580-590 Folsom Street, San Francisco, Calif.

National Biscuit Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 449 West Fourteenth Street, New York, N. Y., and owns and operates a business under the trade name, Pacific Coast Candy Co., located at 815 Battery Street, San Francisco, Calif., also owns and operates a business located at 1366 East Seventh Street, Los Angeles, Calif., under the name of Bishop & Co., Inc.

Walter A. Vellguth, of 2500 Eighteenth Street, San Francisco, Calif., is an individual, trading and doing business in San Francisco, Calif., as Vellguth's Candy Co.

George Haas & Sons, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 1380 Howard Street, San Francisco, Calif.

Planters Nut & Chocolate Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its home office and principal place of business located at Wilkes-Barre, Pa., and operates a branch plant at 530 Davis Street, San Francisco, Calif.

Frederick W. Theisen, is an individual, trading under the trade name of Purity Candy Co., and his place of business is located at 633 Laguna Street, San Francisco, Calif.

Laurente Cerf, is an individual, trading and doing business as Orange Blossom Candy Co., with his place of business located at 11 Pearl Street, San Francisco, Calif.

Collins Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at Emeryville, Alameda County, Calif.

Nathan Matzger and Manford Matzger, are copartners, and are trading and doing business under the partnership name of Matzger

Complaint

34 F. T. C.

Chocolate Co., and their principal place of business is located at 780 Harrison Street, San Francisco, Calif.

Golden Nugget Sweets, Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 1975 Market Street, San Francisco, Calif.

William G. Coxon and Pearl W. Coxon, are copartners, trading and doing business as Coxon Co., and the address of said business is 240 Shotwell Street, San Francisco, Calif.

E. A. Hoffman Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 6600 Avalon Boulevard, Los Angeles, Calif.

General Food Products Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 1925 East Vernon Avenue, Los Angeles, Calif.

Alfred Beaudry and Wilfred Beaudry, are copartners, trading and doing business under the partnership name of Beaudry Bros. Candy Co. The address of said respondents is 3762 South Normandie Avenue, Los Angeles, Calif.

James Doumakes, is an individual, trading and doing business under the firm name of Doumaks Marshmallow Co. Respondent's place of business is located at 711 East Jefferson Boulevard, Los Angeles, Calif.

Sam Gendel and Lillian Gold, are copartners, trading and doing business as Los Angeles Nut House, and their principal place of business is located at 722 Market Court, 1040 San Julian Street, Los Angeles, Calif.

Johanna A. Gilker, is an individual, trading and doing business as Los Angeles Confection Co., with her place of business located at 14315 Hawthorne Boulevard, Lawndale, Los Angeles County, Calif.

Pearson Candy Co., Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 555 Towne Avenue, Los Angeles, Calif.

Triangle Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 1309 Santa Fe Avenue, Los Angeles, Calif.

Jesse G. Beckjord, is an individual, trading and doing business as Wonder Food Marshmallow Co., with his place of business located at 503-511 West Sixty-second Street, Los Angeles, Calif.

Complaint

Charles E. Hassey, is an individual, trading and doing business as Hassey Candy Co., with his place of business located at 2045 West Jefferson Boulevard, Los Angeles, Calif.

Walter A. Hewitt, is an individual, trading and doing business as Hewitt Candy Co., with his place of business located at 835 South San Julian Street, Los Angeles, Calif.

Sunkist Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 425 East Fifty-eighth Street, Los Angeles, Calif.

G. Fred Spearin, is an individual, with his place of business located at 1687 Beverly Boulevard, Los Angeles, Calif.

J. G. McDonald Chocolate Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at Salt Lake City, Utah.

Ostler Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 143 South State Street, Salt Lake City, Utah.

Robert E. Wilson, is an individual, trading and doing business as Sweetarts, with his place of business located at 328 North East Failing Street, Portland, Oreg.

Queen Anne Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 1039 Sixth Avenue South, Seattle, Wash.

Candy House, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 1600 Dexter Avenue, Seattle, Wash.

Joseph Vinikow, is an individual, trading and doing business as Parisian Candy Co., with his place of business located at 1319 Washington Street, Seattle, Wash.

Margaret Burnham's, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 4632 Telegraph Avenue, Oakland, Calif.

Cardinet Candy Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home-office and principal place of business located at 2172 Market Street, Oakland, Calif.

Complaint

34 F. T. C.

California Peanut Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 630 Twentieth Street, Oakland, Calif.

Louis F. Chiodo and Emilio G. Chiodo, are copartners, trading and doing business as Chiodo Candy Co., and their principal place of business is located at 2923 Adeline Street, Oakland, Calif.

Leslie N. Johnson, is an individual, trading and doing business as Leslie's Fountain, with his place of business located at Walnut Creek, Calif.

Brecht Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its home office and principal place of business located at Denver, Colo.

Cosner Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its home office and principal place of business located at Denver, Colo.

Savage Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its home office and principal place of business located at Denver, Colo.

Carl C. Bonn, is an individual, trading and doing business as Bonn Candy Co., with his place of business located at 287 North San Pedro Street, San Jose, Calif.

Davenport Candycrafts, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at South 168 Division Street, Spokane, Wash.

Riley Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at West 1015 First Street, Spokane, Wash.

Shupe-Williams Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 2605 Wall Avenue, Ogden, Utah.

Startup Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at Provo, Utah.

Idaho Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Idaho, with

1431

Complaint

its home office and principal place of business located at 412 South Eighth Street, Boise, Idaho.

Warren Watkins, is an individual, trading and doing business as Warren Watkins Manufacturing Co., and his principal place of business is located at 768 Merchant Street, Los Angeles, Calif.

Sweet Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its home office and principal place of business located at 218 South First Street West, Salt Lake City, Utah.

Miss Saylor's Chocolates, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the States of California, with its home office and principal place of business located at 2720 Encinal Avenue, Alameda, Calif.

Imperial Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its home office and principal place of business located at 800 Western Avenue, Seattle, Wash.

Christopher Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 4020 Avalon Boulevard, Los Angeles, Calif.

B. Guy Showley is an individual, trading and doing business as Showley Bros., and his principal place of business is located at 800 K Street, San Diego, Calif.

All of the above-named respondents are members of the respondent Association. Each of said respondents, individually and as members of said respondent Association have taken, and do now take, an active part in all the activities herein described.

PAR. 3. The individual respondents, named in paragraph 1 hereof, direct and control the policies of the respondent Association and have taken an active part in all of the unfair methods of competition and the unfair acts and practices as herein set out.

PAR. 4. The respondent corporations, firms, individuals, and partnerships, named in paragraph 2 hereof, have been for several years last past and are now engaged in the business of manufacturing candies and other confections and in the sale and distribution thereof in commerce among and between the various States of the United States and the District of Columbia. Respondents cause their respective products, when sold, to be shipped and transported in commerce from their respective places of business through and into States of the United States other than the States in which respondents maintain their respective places of business, and there has been for more than 3 years

last past and now is a constant and recurring current of trade in commerce between and among the several States of the western portion of the United States in candies and other confections.

PAR. 5. There are corporations, partnerships, firms, and individuals located in the States of California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico, who are engaged in manufacturing candy and other confections, and who sell and distribute their respective products in commerce among and between the various States of the United States and who do not engage in wrongful and unlawful acts and practices herein described as engaged in by respondents, and with these corporations, firms, individuals, and partnerships, the respondents are and have been in direct and substantial competition.

PAR. 6. Respondent manufacturers, named in paragraph 2 hereof, constitute a large and influential part of the candy manufacturers in the States of California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico, and constitute a group so large and influential in said business as to be able to control and influence the flow of trade and commerce in said products between and among said States and to control the prices thereof and discounts to be allowed on the sales of said products. Said respondents, but for the wrongful conspiracy, combination, understanding, and agreement and wrongful and unlawful acts and practices herein set out, would be in free and active competition with one another and are in such competition with other manufacturers of candies and confections in said States.

PAR. 7. Some time prior to December 1937, respondent manufacturers, acting in combination with one another, and respondent Association, and its officers and members, and through respondent Association, for the purpose and intent of eliminating or restraining price competition among themselves, and in order to stabilize and make uniform the prices of the products by them and each of them sold and to stabilize and make uniform discounts allowed thereon, adopted, established and have since maintained and carried out a system or policy of merchandising whereby they, through agreements and understandings between and among one another, fix specified standard and uniform prices and discounts at which their products should be and are sold in said States.

Pursuant to such agreements and understandings, respondent Association, and respondent candy manufacturers, each and every member of said Association, and every officer of said Association, has endeavored, and now endeavors, to enforce and has enforced, and is now enforcing, said merchandising policy, and to this end, among other things, has done and is now doing the following acts and things:

(a) Respondent Association, through questionnaires sent to the different manufacturers, obtained figures representing production costs and from the figures so obtained has struck an average figure and respondent manufacturers have adopted the figure thus obtained as a price below which no member of respondent Association would sell.

(b) Respondent manufacturers, while pretending to act under the "Fair Trade Act" and the "Unfair Practice Act" of the State of California, adopted cost figures arrived at in an arbitrary manner, as aforesaid, and have agreed to be, and have been, governed and controlled by said figures in the sale of their respective products both in the States of their respective locations and in other States into which they sell and ship their products.

(c) Respondent Association has arbitrarily classified purchasers of said products into classes, such as "wholesalers," "jobbers," and other dealers, and has fixed specified standard and uniform discounts to be allowed to purchasers of each classification, and respondent manufacturers have adopted said classifications and have allowed discounts in conformity therewith.

(d) Respondent manufacturers have directly and through "clearing houses" and respondent Association submitted price lists to other members of said Association and to other candy manufacturers and have, after demand being made by the said Association, revised said price lists to make them uniform.

(e) Respondent manufacturers have agreed to file, and have filed, with the respondent Association advance notice of contemplated price changes, and have preceded all price changes with such advance notice.

(f) Respondent Association, through its officers and respondent manufacturers have made threats to institute court proceedings and have aided and abetted in instituting court proceedings against manufacturers selling at prices below the costs arbitrarily arrived at as hereinbefore set out.

(g) Respondent Association through its officers and respondent manufacturers have disseminated threats among the members of said Association and other manufacturers that any manufacturer who sold below the cost figures adopted would be prosecuted under the California "Fair Trade Act" or "Unfair Practice Act."

PAR. 8. Each and every corporation, partnership, firm, and individual, named herein, directly and through the agency of the respondent Association, has taken an active part in all of the activities herein set out.

PAR. 9. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public and respondents' competitors and

Findings

34 F. T. C.

have a dangerous tendency to, and have actually hindered and prevented price competition between and among respondents in the sale of candies and other confections in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; increased the prices of candies and confections paid by the purchasers thereof, and consequently, the prices paid by the public; and have unreasonably restrained such commerce in candies and other confections, and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 14, 1940, issued and subsequently served upon the respondents named in the caption hereof its amended and supplemental complaint in this proceeding, charging the respondents with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of said act (on May 9, 1940, the Commission had previously issued its original complaint in this proceeding, which was identical with the amended and supplemental complaint except that it failed to name certain parties as respondents therein). After the filing of the respondents' answers, testimony and other evidence in support of the allegations of the amended and supplemental complaint were introduced by the attorney for the Commission, and in opposition thereto by attorneys for certain of the respondents, before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, which testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the amended and supplemental complaint, the answers of the respondents, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Western Confectioners Association, Inc., hereinafter for convenience, frequently referred to as respondent Association or as the Association, is a corporation organized, existing,

and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 74 New Montgomery Street, San Francisco, Calif. Said respondent is a nonprofit association and its membership is composed of various manufacturers of candies and other confections located in the States of California, Washington, Oregon, Montana, Nevada, Utah, Wyoming, Colorado, Arizona, and New Mexico.

Respondent, Alfred Beaudry, 3762 South Normandie, Los Angeles, Calif., is an individual, and is president, of the respondent association.

Respondent, T. A. White, 2700 Eighteenth Street, San Francisco, Calif., is an individual, and is vice president, of the respondent Association.

Respondent, Clarence M. Kretchmer, 55 Federal Street, San Francisco, Calif., is an individual, and is secretary-treasurer of the respondent Association.

Respondent, LeRoy M. Gimbal, 501 Folsom Street, San Francisco, Calif., is an individual, and is a director, of the respondent Association.

Respondent, Alfred Beaudry, 3762 South Normandie, Los Angeles, Calif., is an individual, and is a director, of the respondent Association.

Respondent, Leon Sweet, 218 South First Street, West, Salt Lake City, Utah, is an individual, and is a director, of the respondent Association.

Respondent, Harold Thompson, 1600 Dexter Avenue, Seattle, Wash., is an individual, and is a director, of the respondent Association.

Respondent, E. H. Jenanyan, 530 Davis Street, San Francisco, Calif., is an individual, and is a director, of the respondent Association.

Respondent, A. C. Carrington, 2420 Encinal Avenue, Alameda, Calif., is an individual, and is a trustee, of the respondent Association.

Respondent, Chester Roberts, 800 Western Avenue, Seattle, Wash., is an individual, and is a trustee, of the respondent Association.

Respondent, George Cardinet, 2172 Market Street, Oakland, Calif., is an individual, and is a trustee, of the respondent Association.

Respondent, H. L. Brown, 110 East Twenty-sixth Street, Tacoma, Wash., is an individual, and is a trustee, of the respondent Association.

Respondent, Robert W. Kaneen, 4020 Avalon Boulevard, Los Angeles, Calif., is an individual, and is a trustee, of the respondent Association.

Respondent, E. A. Hoffman, 6600 Avalon Boulevard, Los Angeles, Calif., is an individual, and is a trustee, of the respondent Association.

Findings

34 F. T. C.

The individual respondents named above direct and control the policies of the respondent Association and have participated actively in the methods, acts and practices hereinafter described.

PAR. 2. Respondent, Brown & Haley, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 110 East Twenty-sixth Street, Tacoma, Wash.

Respondents, L. M. Gimbal and R. E. Gimbal, are copartners, trading and doing business as Gimbal Brothers, with their principal office and place of business located at 501 Folsom Street, San Francisco, Calif.

Respondent, Euclid Candy Co. of California, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 715 Battery Street, San Francisco, Calif.

Respondent, Hromada Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1206 Sansome Street, San Francisco, Calif.

Respondent, Sierra Candy Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2700 Eighteenth Street, San Francisco, Calif.

Respondent, Hoefler's Centennial Chocolates, Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 580-590 Folsom Street, San Francisco, Calif.

Respondent, National Biscuit Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 449 West Fourteenth Street, New York, N. Y. This respondent owns and operates a business under the name, Pacific Coast Candy Co., located at 815 Battery Street, San Francisco, Calif., and also a business under the name of Bishop & Co., Inc., located at 1366 East Seventh Street, Los Angeles, Calif.

Respondent, Walter A. Vellguth, is an individual, trading and doing business as Vellguth's Candy Co., with his principal office and place of business located at 2500 Eighteenth Street, San Francisco, Calif.

Respondent, George Haas & Sons, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1380 Howard Street, San Francisco, Calif.

Respondent, Planters Nut & Chocolate Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Wilkes-Barre, Pa., and a branch plant located at 530 Davis Street, San Francisco, Calif.

Respondent, Frederick W. Theisen, is an individual, trading under the trade name of Purity Candy Co., with his principal office and place of business located at 633 Laguna Street, San Francisco, Calif.

Respondent, Laurente Cerf, is an individual, trading and doing business as Orange Blossom Candy Co., with his principal office and place of business located at 11 Pearl Street, San Francisco, Calif.

Respondent, Collins Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at Emeryville, Alameda County, Calif.

Respondents, Nathan Matzger and Manford Matzger, are copartners, trading and doing business under the partnership name of Matzger Chocolate Co., with their principal office and place of business located at 780 Harrison Street, San Francisco, Calif.

Respondent, Golden Nugget Sweets, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1975 Market Street, San Francisco, Calif.

Respondents, William G. Coxon and Pearl W. Coxon, are copartners, trading and doing business as Coxon Co., with their principal office and place of business located at 240 Shotwell Street, San Francisco, Calif.

Respondent, E. A. Hoffman Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 6600 Avalon Boulevard, Los Angeles, Calif.

Respondent, General Food Products Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1925 East Vernon Avenue, Los Angeles, Calif.

Respondents, Alfred Beaudry and Wilfred Beaudry, are copartners, trading and doing business under the partnership name of Beaudry Bros. Candy Co., with their principal office and place of business located at 3762 South Normandie Avenue, Los Angeles, Calif.

Respondent, James Doumakes, is an individual, trading and doing business under the name of Doumaks Marshmallow Co., with his prin-

Findings

34 F. T. C.

principal office and place of business located at 711 East Jefferson Boulevard, Los Angeles, Calif.

Respondents, Sam Gendel and Lillian Gold, are copartners, trading and doing business as Los Angeles Nut House, with their principal office and place of business located at 722 Market Court, 1040 San Julian Street, Los Angeles, Calif.

Respondent, Johanna A. Gilker, is an individual, trading and doing business as Los Angeles Confection Co., with her principal office and place of business located at 14315 Hawthorne Boulevard, Lawndale, Los Angeles County, Calif.

Respondent, Pearson Candy Co., Ltd., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 555 Towne Avenue, Los Angeles, Calif.

Respondent, Triangle Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 1309 Santa Fe Avenue, Los Angeles, Calif.

Respondent, Jesse G. Beckjord, is an individual, trading and doing business as Wonder Food Marshmallow Co., with his principal office and place of business located at 503-511 West Sixty-second Street, Los Angeles, Calif.

Respondent, Charles E. Hassey, is an individual, trading and doing business as Hassey Candy Co., with his principal office and place of business located at 2045 West Jefferson Boulevard, Los Angeles, Calif.

Respondent, Walter A. Hewitt, is an individual, trading and doing business as Hewitt Candy Co., with his principal office and place of business located at 835 South San Julian Street, Los Angeles, Calif.

Respondent, Sunkist Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 425 East Fifty-eighth Street, Los Angeles, Calif.

Respondent, G. Fred Spearin, is an individual, with his principal office and place of business located at 1687 Beverly Boulevard, Los Angeles, Calif.

Respondent, J. G. McDonald Chocolate Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at Salt Lake City, Utah.

Respondent, Ostler Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State

1431

Findings

of Utah, with its principal office and place of business located at 143 South State Street, Salt Lake City, Utah.

Respondent, Robert E. Wilson, is an individual, trading and doing business as Sweetarts, with his principal office and place of business located at 328 Northeast Failing Street, Portland, Oreg.

Respondent, Queen Anne Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1039 Sixth Avenue South, Seattle, Wash.

Respondent, Candy House, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1600 Dexter Avenue, Seattle, Wash.

Respondent, Joseph Vinikow, is an individual, trading and doing business as Parisian Candy Co., with his principal office and place of business located at 1319 Washington Street, Seattle, Wash.

Respondent, Margaret Burnham's, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 4632 Telegraph Avenue, Oakland, Calif.

Respondent, Cardinet Candy Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California with its principal office and place of business located at 2172 Market Street, Oakland, Calif.

Respondent, California Peanut Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 630 Twentieth Street, Oakland, Calif.

Respondents, Louis F. Chiodo and Emilio G. Chiodo, are copartners, trading and doing business as Chiodo Candy Co., with their principal office and place of business located at 2923 Adeline Street, Oakland, Calif.

Respondent, Leslie N. Johnson, is an individual, trading and doing business as Leslie's Fountain, with his principal office and place of business located at Walnut Creek, Calif.

Respondent, Brecht Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at Denver, Colo.

Respondent, Cosner Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at Denver, Colo.

Respondent, Savage Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Colorado, with its principal office and place of business located at Denver, Colo.

Respondent, Carl C. Bonn, is an individual, trading and doing business as Bonn Candy Co., with his principal office and place of business located at 287 North San Pedro Street, San Jose, Calif.

Respondent, Davenport Candycrafts, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at South 168 Division Street, Spokane, Wash.

Respondent, Riley Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at West 1015 First Street, Spokane, Wash.

Respondent, Shupe-Williams Candy Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 2605 Wall Avenue, Ogden, Utah.

Respondent, Startup Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at Provo, Utah.

Respondent, Idaho Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Idaho, with its principal office and place of business located at 412 South Eighth Street, Boise, Idaho.

Respondent, Warren Watkins, is an individual, trading and doing business as Warren Watkins Manufacturing Co., with his principal office and place of business located at 768 Merchant Street, Los Angeles, Calif.

Respondent, Sweet Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Utah, with its principal office and place of business located at 218 South First Street West, Salt Lake City, Utah.

Respondent, Miss Saylor's Chocolates, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 2720 Encinal Avenue, Alameda, Calif.

Respondent, Imperial Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 800 Western Avenue, Seattle, Wash.

Findings

Respondent, Christopher Candy Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 4020 Avalon Boulevard, Los Angeles, Calif.

Respondent, B. Guy Showley, is an individual, trading and doing business as Showley Bros., with his principal office and place of business located at 800 K Street, San Diego, Calif.

PAR. 3. The Commission having concluded that the evidence is insufficient to establish that the following respondents participated in the combination and conspiracy hereinafter described, the terms "respondents" and "respondent manufacturers" as used hereinafter will not include these respondents unless the contrary is indicated:

Euclid Candy Co. of California, Inc., a corporation; Hoefer's Centennial Chocolates, Ltd., a corporation; Walter A. Vellguth, individually, and doing business as Vellguth's Candy Co.; George Haas & Sons, a corporation; Frederick W. Theisen, individually, and trading under the trade name of Purity Candy Co.

Laurente Cerf, individually, and trading and doing business as Orange Blossom Candy Co.; Collins Candy Co., a corporation; Nathan Matzger and Manford Matzger, individually, and as copartners, trading and doing business under the partnership name of Matzger Chocolate Co.

Golden Nugget Sweets, Ltd., a corporation; William G. Coxon and Pearl W. Coxon, individually, and as copartners trading and doing business as Coxon Co.; James Doumakes, individually, and trading and doing business under the firm name Doumaks Marshmallow Co.

Sam Gendel and Lillian Gold, individually, and as copartners, trading and doing business as Los Angeles Nut House; Johanna A. Gilker, individually and trading and doing business as Los Angeles Confection Co.; Pearson Candy Co., Ltd., a corporation; Triangle Candy Co., a corporation.

Jesse G. Beckjord, individually, and trading and doing business as Wonder Food Marshmallow Co.; Charles E. Hassey, individually, and trading and doing business as Hassey Candy Co.; Walter A. Hewitt, individually, and trading and doing business as Hewitt Candy Co.; Sunkist Candy Co., a corporation; G. Fred Spearin, an individual.

J. G. McDonald Chocolate Co., a corporation; Ostler Candy Co., a corporation; Robert E. Wilson, individually, and trading and doing business as Sweetarts; Queen Anne Candy Co., a corporation; Joseph Vinikow, individually, and trading and doing business as Parisian Candy Co.; Margaret Burnham's, Inc., a corporation; California Pea-

nut Co., a corporation; Louis F. Chiodo and Emilio G. Chiodo, individually, and as copartners, trading and doing business as Chiodo Candy Co.

Leslie N. Johnson, individually, and trading and doing business as Leslie's Fountain; Cosner Candy Co., a corporation; Savage Candy Co., a corporation; Carl C. Bonn, individually, and trading and doing business as Bonn Candy Co.; Davenport Candycrafts, a corporation; Riley Candy Co., a corporation; Shupe-Williams Candy Co., a corporation; Startup Candy Co., a corporation; and Idaho Candy Co., a corporation.

PAR. 4. The respondent corporations, firms, individuals, and partnerships, named in paragraph 2 hereof (except those excluded in paragraph 3 hereof) are now, and for several years last past have been, engaged in the business of manufacturing candies and other confections, and in the sale and distribution of such products. In the course and conduct of their respective businesses the respondents cause, and have caused, their products, when sold, to be shipped and transported from their respective places of business through and into States of the United States other than those in which such shipments originate. Respondents maintain and at all times mentioned herein have maintained, a course of trade in their respective products in commerce among and between the several States of the United States.

All of the respondent manufacturers are members of respondent Association, and have participated actively in formulating the policies and carrying on the activities of the Association.

The respondent manufacturers constitute a large and influential portion of the candy manufacturers in the States of California, Washington, Utah, and Colorado. They are able to control or substantially influence the flow of trade and commerce in candies and confections among and between those States and to control or substantially influence the prices of such products.

PAR. 5. There are in the States named above other corporations, firms, individuals, and partnerships, engaged in the manufacture of candies and other confections, and in the sale and distribution of such products in commerce among and between these States and various other States of the United States. The respondent manufacturers are and have been in direct and substantial competition with such other manufacturers. But for the combination and conspiracy hereinafter described, the respondent manufacturers would also be in direct and active competition with one another in the sale and distribution of their products in commerce among and between these States and among and between other States of the United States.

PAR. 6. While the Western Confectioners Association was organized some 25 years ago, it was not until about 1936 that it became particularly active or attempted to serve as anything more than a social organization. In 1937 a new constitution and bylaws was adopted, and in January 1938 the Association was incorporated. The ostensible purposes of the Association, as set forth in the constitution, were:

(1) To establish and maintain fair and equitable standards of labor; to cultivate friendly relations within the industry; to eliminate evils and abuses with the view of promoting the common welfare of the Industry, its employees, and the public good.

(2) To analyze and investigate the many problems affecting this industry, including the problem of production and the abatement of the evils of child labor, unfair competition, and manufacturing under sub-standard conditions.

(3) To secure freedom from unjust or unlawful exactions and enactments, establish and maintain uniformity and equity in the customs and commercial usages of the industry, and recognize and deal with any unfair or discriminating conditions that may exist or arise within the Industry.

(4) To determine means of improvement, standardization and methods of manufacturing, costing and marketing of candy and closely allied competitive products, and of increasing the efficiency of management.

(5) To make such statistical and fact-finding investigations as may seem desirable and to build up information about the Industry which will make possible intelligent treatment of local and national problems.

(6) To develop friendly and cooperative relations with similar groups in other sections of the United States which shall have for its primary purpose the welfare of this industry. And such other purposes as will be of general benefit to the industry.

For the purpose of the carrying on of its various activities the area covered by the Association was divided into four zones, as follows:

Southern California Zone-----	South of San Luis Obispo and Bakersfield, by a line drawn East and West.
Northern California Zone-----	North of and including San Luis Obispo and Bakersfield, by a line drawn East and West.
Northern Zone-----	States of Washington and Oregon.
Eastern Zone-----	States of Utah, Colorado, etc.

Under the caption, "Fair Trade Practice Rules" the constitution contained the following provisions, among others:

SELLING BELOW COST. No member shall sell any candy at a price below cost; except that a member may meet the lower prices of a competitor, whose prices are not in violation of the established Cost Survey (The Association will endeavor with the least delay to establish this Cost Survey for our Industry); *Provided, however,* That such member shall report immediately to the Manager of the Association the name of such competitor, the sales price of the article or articles of candy involved.

Findings

34 F. T. C.

A member may merchandise a new product below cost, provided the member's estimated cost based on potential production and based on the established Cost Survey for the Industry, shall have been filed in the Manager's Office.

This provision shall not apply to distressed candy which may be sold below the member's cost, provided due notice of said proposed sale has been filed in the Manager's Office, giving description, quantity price, and to whom offered or sold.

* * * * *

DISCOUNTS. No member shall allow to Jobbers discount for cash to exceed two (2) percent in any case, and the time in which said cash discount shall be allowed shall not exceed fifteen (15) days from date of shipment, and all bills paid after expiration of such member's discount period shall be net. However, on water freight shipments from the Pacific Coast to the Atlantic Coast, Alaska, Hawaii, Philippines, or foreign territory, an additional fifteen (15) days may be allowed, but provided further that the invoice shall clearly state the date of the invoice and the actual date of the shipment and include the words "Via Water Freight."

For sales direct to the Retail Trade, the above terms shall apply unless application is made to the Board of Directors by any Zone desiring a change in the terms applicable to the specific Zone.

A statute of the State of California known as the "Unfair Practices Act" provides, in part, that it shall be unlawful for any person engaged in business within the State to sell any article or product at less than the cost thereof to such vendor. The act further provides for the bringing of injunction proceedings to prevent the violation of the act, and for the imposition of certain penalties for the violation of the act. Apparently the provision of the Association's constitution with respect to "Selling Below Cost" was framed with the State statute in mind.

While the constitution provided for the payment of such membership dues or fees as might be fixed by the Association's board of directors, and for the forfeiture of all of the rights and privileges of membership in the event of the failure to pay such dues, there apparently has been no serious effort made during the last several years to enforce these provisions. The record discloses numerous instances in which members who were in default in the payment of dues have attended the conventions of the Association and meetings held in the various zones, and have participated actively in the formulation of the Association's policies and in carrying out the various activities and practices of the Association and the various zone groups.

Not only was the membership of the Association divided into groups based upon geographic lines, but the membership also divided into groups determined by the particular kinds and varieties of candies manufactured by the members. For example, some of the members manufactured principally "hard mixed candy," others "bar candy," others "pan goods," others "chocolate drops," others "box

goods," etc. The various members naturally had little interest in lines of candies which they themselves did not manufacture, and confined their activities in the main to the group or groups representing their own particular line of products. At the annual conventions of the Association it was the custom and practice of the members, after certain general discussions in the convention as a whole, to separate into the various groups, and it was principally through these groups that the real activities of the Association were conducted.

PAR. 7. Some 5 or 6 years ago certain members and officers of the Association conceived the idea of using the Association as a medium whereby agreements might be reached among the members with respect to the minimum prices at which the products of the respective members would be offered for sale, and also with respect to discounts which would be allowed purchasers. The exact time at which this plan had its inception is not disclosed by the record, but the plan was the subject of discussion in the Association and among certain of the members as early as 1936. As a part of and in furtherance of the plan, the Association undertook in the early part of 1937 the making of certain surveys among its members, these surveys being designated by the Association as "Cost Surveys." Letters explaining the nature of the surveys were addressed by the Association to all of the members, and in these letters were enclosed certain questionnaires to be answered by the members. These questionnaires called for various data pertaining to the various items entering into the cost of the manufacture of candy, including such items as labor, factory and packing overhead, shipping expense, selling expense, administrative expense, etc. It was contemplated by the Association that cost surveys would eventually be made on all of the various kinds of candy manufactured and sold by the members, but so far as the record discloses only three of the surveys were completed, these covering hard mixed candy, pan goods and chocolate drops.

Arrangements were made by the Association with a prominent commercial reporting concern under which the members were to return the executed questionnaires to this concern rather than to the Association, and this concern in turn was to advise the Association of the results of the survey. Averages only were to be supplied rather than the actual survey sheets. The members were identified by code numbers only and were requested not to sign the questionnaires. Assurance was given in the Association's letter that the data submitted by the members in response to the questionnaire would be strictly confidential and would be known only to the commercial agency's accountant.

Findings

34 F. T. C.

The questionnaires were sent by the Association not only to members whose places of business were located within the State of California, but were sent to all of members of the Association located in all of the States comprising the Association's territory. Nor was the data requested in the questionnaires restricted to the cost of goods sold within the State of California, but the information requested was of a general nature and was intended to cover the cost of all products sold by the members, regardless of the territory in which the sales were made and irrespective of whether such sales were intra-state or interstate. Obviously it was the intention of the Association to use the California Unfair Practices Act as the basis of price agreements which would cover all of the sales transactions of all of the members of the Association.

While it appears that the major portion of the members of the Association did not answer and return the cost survey questionnaires, a substantial number did supply the data as requested, and in due course the results of the surveys were communicated by the commercial reporting agency to the Association. In arriving at the cost figures submitted to the Association the agency computed the total of all of the answers made by the members, and then obtained an average figure by dividing this total by the number of members reporting. Upon receipt of this information from the agency the Association made known to the members the average figures arrived at, and these figures were through common understanding accepted by the respondent manufacturers as governing the minimum prices in all sales of their products.

Shortly after the completion of the cost surveys, on hard mixed candy and chocolate drops the city attorney of Los Angeles, California, proceeding under the California Unfair Practices Act and apparently acting at the instance of the Association, called a meeting of the members of the Association in the Los Angeles area. The purpose of the meeting was to arrive at and publish figures representing the cost of hard mixed candy and chocolate drops. At this meeting the cost figures on hard mixed candy and chocolate drops resulting from the Association's surveys were adopted as the correct figures representing the cost of such candy, and the members of the Association were in the course advised by the Association of the action taken at the meeting. The record is replete with correspondence between the various respondent manufacturers and between the respondent manufacturers and the Association, showing that these figures were by common understanding and agreement among the members adopted and accepted as the minimum prices on hard mixed candy and chocolate drops, and that there was concerted effort on the part

of the members manufacturing these types of candy to maintain these minimum prices on their products.

That the respondents were successful, through concerted and co-operative action, in increasing and maintaining minimum prices not only on hard mixed candy and chocolate drops but on other candies as well, is evidenced by numerous pieces of documentary evidence in the record. For example, the minutes of the annual convention of the Association held in Los Angeles in February 1938 recite that the chairman of the group representing the bulk candy manufacturers reported to the convention that:

Higher prices were obtained in 1937 as a result of cooperation among firms producing this type of merchandise.

A letter addressed to a number of members of the Association by the secretary in August 1937 stated in part that:

Much has already been accomplished. Through concerted effort the price for hard candy was raised 1¢ above last year.

And a letter addressed by one of the respondents, to another of the respondents, in July 1937, read in part as follows:

We felt that it is not very much to ask to support the Association \$10. to \$20. per month. It would not take much of an increase in the price to pay this back a thousand fold. As Leon Sweet stated at the time of the recent convention—by just coming there and getting Jelly Beans up ½¢, he had paid for several trips to the convention. This same would true [sic] if we can get the price of hard candy up ½¢ to 1¢ per pound this Fall. The additional profits derived from that alone would support the association for many years to come. As you know, we are just now starting on general comparative expenses. Believe that this survey on hard candy will help us to maintain prices this Fall season, especially here in California.

In certain instances reports reached the respondents that certain manufacturers were not maintaining the minimum prices which had been arrived at as shown above, and such manufacturers were threatened by respondents with legal action for such departures. In at least two instances cases of alleged price-cutting were referred by the Association to its attorney for investigation and possible legal action. Respondents also caused threats to be circulated generally among manufacturers that those who sold their products at prices less than the cost figures adopted would be prosecuted under the Unfair Practices Act.

PAR. 8. In addition to establishing and maintaining a system of minimum prices governing the sale of their products, the respondents have by concerted action classified purchasers of their products into various classes, such as syndicates, wholesalers, jobbers, and retailers, and have agreed upon and fixed certain specified standard and uni-

Order

34 F. T. C.

form discounts to be allowed purchasers within such classifications. The respondent manufacturers were requested by the Association to supply detailed information relative to the discounts allowed various purchasers of their products, and from this information, as well as from other information gathered by the Association, the respondents made up an arbitrary classification of the purchasers of candy in the trade area served by respondents. The respondents, pursuant to agreement among themselves, adopted such classification and adhered to it in allowing or declining to allow discounts to purchasers.

PAR. 9. Each of the respondent members has acted in concert and in cooperation with one or more of the other respondent members and with the respondent Association in doing the foregoing acts in furtherance of the understanding, combination, and conspiracy herein described.

PAR. 10. The Commission further finds that the understanding, agreement, combination, and conspiracy entered into by the respondents, and the acts done pursuant thereto and in furtherance thereof, as herein described, have the tendency and capacity to hinder, restrain, lessen, and prevent competition, and did substantially hinder, restrain, and lessen competition, in the sale of candies and other confections in commerce among and between various States of the United States. Such understanding, agreement, combination and conspiracy, and the acts done pursuant thereto and in furtherance thereof, also have the tendency and capacity to increase the price of candy and other confections to the purchasers thereof and ultimately to the general public, and unreasonably to restrict and restrain trade in candies and other confections in commerce among and between various States of the United States.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answers of respondents, testimony and other evidence taken before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, and in opposition thereto, report of the trial examiner upon

1431

Order

the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument, and the Commission having made its findings as to the facts and its conclusion that certain of the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Western Confectioners Association, Inc., a corporation; Warren Watkins, T. A. White, and Clarence M. Kretchmer, individually, and as officers and members of said Association; Leroy M. Gimbal, Alfred Beaudry, Leon Sweet, Harold Thompson, and E. H. Jananyan, individually, and as directors and members of said Association; A. C. Carrington, Chester Roberts, George Cardinet, H. L. Brown, Robert W. Kaneen, and E. A. Hoffman, individually, and as trustees and members of said Association;

Brown & Haley, a corporation; L. M. Gimbal and R. E. Gimbal, individually, and as copartners, trading and doing business as Gimbal Brothers; Hromada Candy Co., a corporation; Sierra Candy Co., Inc., a corporation; National Biscuit Co., a corporation; Planters Nut & Chocolate Co., a corporation; E. A. Hoffman Candy Co., a corporation; General Food Products Co., a Corporation; Alfred Beaudry and Wilfred Beaudry, individually, and as copartners, trading and doing business under the partnership name of Beaudry Bros. Candy Co.; Candy House, Inc., a corporation; Cardinet Candy Co., Inc., a corporation;

Brecht Candy Co., a corporation; Warren Watkins, trading as Warren Watkins Manufacturing Co.; Sweet Candy Co., a corporation; Miss Saylor's Chocolates, Inc., a corporation; Imperial Candy Co., a corporation; Christopher Candy Co., a corporation; and B. Guy Showley, individually, and trading as Showley Bros.; and respondents' officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candies and confections in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Entering into, continuing, or carrying out, or aiding or assisting in the continuing or carrying out, of any agreement, understanding, combination or conspiracy between or among any two or more of said respondents, or between or among any one or more of said respondents and any other person, partnership or corporation, for the purpose or with the effect of establishing or maintaining uniform or minimum prices for respondents' products or uniform discounts to purchasers of such products;

2. Doing, by cooperative or concerted action, or agreement or understanding, between or among any two or more of said respondents, or between or among any one or more of said respondents and any other person, partnership or corporation, any of the following acts or things:

(a) Fixing, establishing or maintaining uniform or minimum prices for respondents' products, or uniform discounts to purchasers of such products;

(b) Classifying purchasers or prospective purchasers of respondents' products into classes for the purpose or with the effect of fixing, establishing, or maintaining uniform discounts to such purchasers.

(c) Coercing or attempting to coerce manufacturers, by threats of legal action or otherwise, to maintain uniform or minimum prices fixed by respondents.

It is further ordered, That said respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That this proceeding be, and it hereby is, dismissed as to respondents, Euclid Candy Co. of California, Inc., a corporation; Hoefer's Centennial Chocolates, Ltd., a corporation; Walter A. Vellguth, individually, and trading and doing business as Vellguth's Candy Co.; George Haas & Sons, a corporation; Frederick W. Theisen, individually, and trading under the trade name of Purity Candy Co.

Laurente Cerf, individually, and trading and doing business as Orange Blossom Candy Co.; Collins Candy Co., a corporation; Nathan Metzger and Manford Matzger, individually, and as copartners trading and doing business under the partnership name of Matzger Chocolate Co.

Golden Nuggets Sweets, Ltd., a corporation; William G. Coxon and Pearl W. Coxon, individually, and as copartners, trading and doing business as Coxon Co.; James Doumakes, individually, and trading and doing business under the firm name Doumaks Marshmallow Co.

Sam Gendel and Lillian Gold, individually, and as copartners, trading and doing business as Los Angeles Nut House; Johanna A. Gilker, individually, and trading and doing business as Los Angeles Confection Co.; Pearson Candy Co., Ltd., a corporation; Triangle Candy Co., a corporation; Jesse G. Beckjord, individually and trading and doing business as Wonder Food Marshmallow Co.; Charles E. Hassey, individually, and trading and doing business as Hassey Candy Co.; Walter A. Hewitt, individually, and trading and doing business as Hewitt Candy Co.; Sunkist Candy Co., a corporation; G. Fred Spearin, an individual.

1431

Order

J. G. McDonald Chocolate Co., a corporation; Ostler Candy Co., a corporation; Robert E. Wilson, individually, and trading and doing business as Sweetarts; Queen Anne Candy Co., a corporation; Joseph Vinikow, individually, and trading and doing business as Parisian Candy Co.; Margaret Burnham's, Inc., a corporation; California Peanut Co., a corporation; Louis F. Chiodo and Emilio G. Chiodo, individually, and as copartners, trading and doing business as Chiodo Candy Co.

Leslie N. Johnson, individually, and trading and doing business as Leslie's Fountain; Cosner Candy Co., a corporation; Savage Candy Co., a corporation; Carl C. Bonn, individually, and trading and doing business as Bonn Candy Co.; Davenport Candycrafts, a corporation; Riley Candy Co., a corporation; Shupe-Williams Candy Co., a corporation; Startup Candy Co., a corporation; and Idaho Candy Co., a corporation.

IN THE MATTER OF

HARRY FROMAN, TRADING AS SUPREME SALES
COMPANY AND RELIABLE PREMIUM HOUSECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3559. Complaint, Aug. 29, 1938—Decision, June 23, 1942*

Where an individual, engaged in competitive interstate sale and distribution of watches, clocks, dolls, doll carriages, men's and boys' jackets, and numerous other articles of merchandise—

- (a) Sold them through use of sales circular and a pull card device, under a plan by which the particular article received and the price paid therefor were dependent upon the legend disclosed under tab of card selected by chance by purchaser, and operator of card, after sale of all chances thereon and remission of money, was compensated by choice of a premium or cash; and thereby

Supplied to and placed in the hands of others a means of conducting lotteries in the sale of his merchandise, notwithstanding subterfuge "Notice to Purchasers" offering right to refuse purchase of article; contrary to an established public policy of the Government and in violation of the criminal laws, and in competition with many who are unwilling to use such, or any method contrary to public policy and refrain therefrom;

With the result that many persons were attracted by said sales method and the element of chance involved therein, and were thereby induced to buy and sell his merchandise in preference to that of his said competitors, from whom trade was thereby unfairly diverted to him; and

Where said individual, engaged as aforesaid—

- (b) Made such statements and representations in his advertising circulars as "Gifts for all," "How to get your Gifts without any cost to you," "Special Offer: 2 Extra Valuable Surprise Gifts Free"; when none of his articles designated as premiums or gifts were free but were in fact delivered as compensation for services, and price thereof was included in price of other articles which representative had to sell or procure sale of, and, in case of at least one, having to pay money in addition to service;

With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such statements were true, thereby inducing it to purchase substantial quantities of said products because of such mistaken belief, and unfairly diverting trade to him from his competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce.

Before *Mr. Randolph Preston* and *Mr. Andrew B. Duval*, trial examiners.

Mr. D. C. Daniel, and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Arthur D. Herrick, of New York City, for respondent.